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REMARKS/ARGUMENTS

Claims 1-27 are pending in the application. Claims 1-6, 8-10, 12-18, 21-25, and 27 stand rejected under 35 U.S.C. §102(b). Claims 7, 11, 19, 20, and 26 stand objected to, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant appreciates the Examiner's early notification of allowable subject matter.

Applicant traverses the rejections, and submits that claims 1-6, 8-10, 12-18, 21-25, and 27 are allowable over the cited prior art, as explained herein. Reconsideration and reexamination of the application is respectfully requested in view of the following remarks.

Rejections Under 35 U.S.C. §102(b)

Claims 1-6, 8-10, 12-18, 21-25, and 27 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 5,628,383 to McIntyre. The rejections are traversed.

The claimed invention is not anticipated under §102 unless each and every element of the claimed invention is found in the prior art. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

Claim 1 requires an adjustable elevated hunting stand for supporting a person a spaced distance from the ground relative to a vertical structure, comprising

- a first platform comprising a first frame having a first member adapted for compressive register with the vertical structure, and at least one second member attached to the first frame and adapted for tensile register with the vertical structure
- a second platform comprising a second frame having a first member adapted for compressive register with the vertical structure, and at least one second member attached to the second frame and adapted for tensile register with the vertical structure
- at least one of the first and second platforms including an attitude adjuster interposed between the at least one of the first and second frames and the vertical structure

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- wherein the person can adjust the planar alignment of the at least one of the first and second frames relative to the vertical structure when the person is supported on the adjustable elevated hunting stand.

Claim 9 requires an adjustable elevated hunting stand for supporting a person a spaced distance from the ground relative to a vertical structure, comprising

- a first platform adapted to support a person in a standing position
- a second platform adapted to support a person in a seated position
- at least one of the first and second platforms including an attitude adjuster interposed between the at least one of the first and second platforms and the vertical structure
- wherein the person can adjust the planar alignment of the at least one of the first and second platforms relative to the vertical structure when the person is supported on the adjustable elevated hunting stand

Claim 12 requires an adjustable elevated hunting stand for supporting a person a spaced distance from the ground relative to a vertical structure, comprising

- at least one platform adapted for at least one of seated and standing support of a user when occupying the hunting stand the spaced distance from the ground relative to a vertical structure, the at least one platform comprising
 - a first member having an inner surface adapted for compressive register with the vertical structure
 - a second member having an inner surface adapted for tensile register with the vertical structure, wherein the inner surface of the first member and the inner surface of the second member cooperate to define a selectable distance therebetween
 - an adjustable mounting between the first and second members, wherein the adjustable mounting between the first and second members allows for adjustment of the selectable distance between the respective inner surfaces

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- whereby vertical structures having varying perimeters can be accommodated by selective adjustment of the selectable distance.

McIntyre '383 discloses a climbing tree stand 12 comprising a first frame assembly that comprises a seat platform 14 and an engagement frame 17, and a standing platform 18. The seat platform 14, engagement frame 17, and standing platform 18 are interconnected by a pair of frame members 13 and vertical members 20, 21. A second, separate platform 25, 32 provides a temporary support during climbing. The standing platform 18 is secured to the tree by a cinch and ratchet device 28 which encircles the tree and draws the standing platform 18 against the tree.

The Examiner asserts that McIntyre '383 "discloses a tree stand 12 comprised of platforms 14, 18, 25, platform 14 and 18 having pivoting members, a ratchet 28 to adjust the stand relative to the tree 11, frame elements 22, 23, 24, 21, 19, and tree engaging elements 15-17." Contrary to the Examiner's assertion, McIntyre '383 does not anticipate claims 1, 9, and 12.

Claims 1-6, 8

The adjustable elevated hunting stand of claim 1 requires that at least one of the two frames have an attitude adjuster which is interposed between one of the two frames and the vertical structure so that a person can adjust the planar alignment of the frame relative to the vertical structure when the person is supported on the hunting stand. McIntyre '383 does not disclose an attitude adjuster interposed between one of the frames 14, 18, 25 and the tree 11. Furthermore, McIntyre '383 does not disclose any device for adjustment of the planar alignment of the frames relative to the tree. The ratchet and cinch set 28 is used to "force the platform frame 18 in engagement with the tree 11." *McIntyre '383, col. 3, ln. 41-43*. This mechanism will not adjust the planar alignment of the platform frame 18 relative to the tree 11. It will merely draw the platform frame 18 against the tree 11, to extend outwardly at whatever angle is dictated by the diameter of the tree and the orientation of the rest of the stand 12, and without any further adjustment able to be made of the platform frame 18.

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Since "each and every element of the claimed invention" of claim 1 is not found in McIntyre '383, *Hybritech, Inc., supra*, McIntyre '383 does not anticipate claim 1 under 35 U.S.C. §102(b). For the same reasons, claims 2-6, and 8, which depend from claim 1, are not anticipated by McIntyre '383.

Claims 9-10

Claim 9 requires an adjustable elevated hunting stand comprising a first platform adapted to support a person in a standing position, and a second platform adapted to support a person in a seated position. At least one of the platforms must include an attitude adjuster interposed between the platform and the vertical structure, so that the person can adjust the planar alignment of the platform relative to the vertical structure when the person is supported on the hunting stand.

McIntyre '383 does not disclose an attitude adjuster interposed between one of the frames 14, 18, 25 and the tree 11. Furthermore, McIntyre '383 does not disclose any device for adjustment of the planar alignment of the frames relative to the tree. The ratchet and cinch set 28 is used to "force the platform frame 18 in engagement with the tree 11." This mechanism will not adjust the planar alignment of the platform frame 18 relative to the tree 11. It will merely draw the platform frame 18 against the tree 11, to extend outwardly at whatever angle is dictated by the diameter of the tree and the orientation of the rest of the stand 12, and without any further adjustment of the platform frame 18 allowed.

Since "each and every element of the claimed invention" of claim 9 is not found in McIntyre '383, *Hybritech, Inc., supra*, McIntyre '383 does not anticipate claim 9 under 35 U.S.C. §102(b). For the same reasons, claim 10, which depends from claim 9, is not anticipated by McIntyre '383.

Claims 12-18, 21-25, and 27

The adjustable elevated hunting stand of claim 12 requires at least one platform adapted for either seated or standing support of a user when occupying the hunting stand. The platform comprises a first member having an inner surface adapted for compressive register with a vertical structure, and a second member having an inner surface adapted for tensile register with the vertical structure so that the inner surface of the first member

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and the inner surface of the second member cooperate to define a selectable distance therebetween. An adjustable mounting is located between the first and second members which allows for adjustment of the selectable distance between the respective inner surfaces so that vertical structures having varying perimeters can be accommodated by selective adjustment of the selectable distance.

McIntyre '383 does not disclose an adjustable mounting located between the first and second members which allows for adjustment of the selectable distance. Assuming for the sake of argument that the "adjustable mounting" on the McIntyre '383 stand is the ratchet and cinch set 28, the frame 18 would necessarily be the first member and the ratchet and cinch set 28 would necessarily be the second member. However, claim 12 requires that the adjustable mounting be located between the first and second members, and thus obviously it must be an element separate from the first and second members. This configuration is not disclosed in McIntyre '383.

Furthermore, the adjustable mounting must allow for adjustment of the selectable distance. The distance between the frame 18 and the ratchet and cinch set 28 is not "selectable" as required by claim 12 and as illustrated in the application under examination. The distance is limited solely by the diameter of the tree 11 at the height at which the ratchet and cinch set 28 wraps around the tree. Thus, the distance between the frame 18 and the ratchet and cinch set 28 cannot be adjustable as required by claim 12.

Since "each and every element of the claimed invention" of claim 12 is not found in McIntyre '383, *Hybritech, Inc., supra*, McIntyre '383 does not anticipate claim 12 under 35 U.S.C. §102(b). For the same reasons, claims 13-18, 21-25, and 27, which depends from claim 12, are not anticipated by McIntyre '383.

CONCLUSION

For the reasons discussed above, claims 1-6, 8-10, 12-18, 21-25, and 27 are in condition for immediate allowance. It is submitted that all of the pending claims in the application are allowable over the prior art of record. Early notification of allowability is requested.

If there are any remaining issues which the Examiner believes may be resolved in an

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interview, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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